

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals)	
With Hearing and Speech Disabilities)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	
)	

COMMENTS

**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
American Deafness and Rehabilitation Association (ADARA)
Association of Late-Deafened Adults (ALDA)
Deaf Seniors of America (DSA)
National Cued Speech Association (NCSA)**

Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), National Association of the Deaf (“NAD”), American Deafness and Rehabilitation Association (“ADARA”), Association of Late-Deafened Adults (“ALDA”), Deaf Seniors of America (“DSA”), and National Cued Speech Association (“NCSA”) (collectively, “Commenters”) submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice seeking comments on the Petition for Rulemaking and Interim Waiver (“Petition”) filed by Convo Communications, LLC (“Convo”), proposing changes to certain Video Relay Service (“VRS”)

service rules.¹ Specifically, Convo urges the Commission to permanently revise two discrete rules that were waived during the height of the COVID-19 pandemic to prevent disruptions in service due to an acute shortage of VRS Communications Assistants (“CAs”) capable of working at dedicated VRS call center facilities.² First, Convo requests that the Commission permanently raise the aggregate limit on minute volume handled per month by an individual VRS provider’s CAs working from remote workstations to 80 percent.³ Second, Convo requests that the Commission permanently allow independent contractors -- instead of traditional employees -- to relay up to 30 percent of a VRS provider’s aggregate call minutes per month.⁴ Finally, during the pendency of its Petition, Convo seeks an extension of the Commission waivers granted in 2020 allowing CAs to work remotely and independent contractors to relay calls consistent with the above-referenced proposed permanent rules.⁵

At the outset, the Commenters applaud the Commission for proactively taking steps at the beginning of the COVID-19 pandemic that prevented a disruption of VRS services. The Commission expeditiously waived its longstanding and well-established VRS rules, however, only due to an unforeseen force majeure event - the worst global pandemic in over 100 years. The adoption of permanent rule changes requires more thoughtful evaluation and consideration, and

¹ Convo Communications, LLC, Petition for Rulemaking and Interim Waiver, CG Docket Nos. 03-123 and 10-51 (filed June 4, 2021) (“*Petition*”).

² See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, Order, 35 FCC Rcd 2715, ¶ 1 (2020) (“*March 2020 Emergency Order*”) (waiving, among other rules, the at-home VRS interpretation and call-center notification rules); see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of Video Relay Service Program*, Order, 35 FCC Rcd 3018 (CGB 2020) (waiving, among other rules, the contracting-for-interpretation prohibition) (“*April 2020 Emergency Order*”).

³ See 47 CFR § 64.604.(b)(8)(i), which establishes the current limit of 50 percent limit on VRS calls handled from home workstations.

⁴ See 47 CFR § 64.604(c)(5)(iii)(N)(1)(iii), which prohibits the use of non-traditional employees from handling VRS calls.

⁵ See *Petition* at 10.

must be accompanied with appropriate safeguards to preserve the security and overall utility of VRS services, as well as to prevent the fraud and waste.

With respect to rule revisions proposed in the Petition, the Commenters do not oppose a relaxation in the monthly minute volume a VRS provider relays through remote CA workstations, so long as any such relaxation is accompanied with safeguards, including routine audits of individual remote workstations by the relevant VRS provider to ensure compliance with privacy standards and fundamental technical requirements and the restoration of speed of answer time to 120 seconds for 80 percent of all calls. Conversely, the Commenters oppose any permanent rule changes allowing independent contractors to relay calls instead of traditional employees. The Commission banned the use of independent contractors after experiencing extensive problems, including significant fraudulent and wasteful activity for which it could not adequately police given its lack of direct oversight over such downstream contractors. The Petition does not offer meaningful solutions to address similar problems that might arise if independent contractors were permitted to handle VRS traffic in the future, and the Commission should accordingly deny or defer action on this request to relax the rule prohibiting independent contractors.

The Commenters do not object to waiver extensions allowing VRS providers to offload more traffic through remote workstations and allow subcontractors to relay VRS calls in the near-term given the ongoing COVID-19 pandemic and the challenges of safely staffing call centers. But the Commenters urge the Commission to immediately restore the obligation that VRS providers answer most calls within 120 seconds.

I. Additional Oversight and Performance Obligations Must Accompany Any Commission Relaxation of Limits on Monthly Minute Volume Relayed Through Remote Workstations

The Commenters do not oppose an increase in the percentage of VRS minutes relayed through remote workstations on a monthly basis to 80 percent so long as any such relaxation is

accompanied with a requirement that VRS providers routinely audit such workstations to ensure that caller privacy and call performance is not adversely affected. Such routine audits should also include a review of VRS providers' complaints within the past year to analyze whether any problems have occurred as a result of an increased minutes relayed through remote workstations and if so, how those have been addressed. VRS providers should also take appropriate measures to ensure a call-back option and connectivity to the next available CA if a disruption in Internet connectivity to the remote workstation occurs.

Convo urges the FCC to “raise the cap on the percentage of a VRS provider’s minutes of VRS calls per month that may be relayed by at-home Communications Assistants... from 50 percent to 80 percent of minutes.”⁶ In addition, Convo asks the Commission to “clarify that, during the course of a day, a [CA] may choose to transition from working from his or her home office to working in a call center, such that the [CA] works several hours from each location.”⁷ In support of its proposed rule change and clarification, Convo asserts that the increased use of remote workstations during the COVID-19 pandemic pursuant to a Commission waiver of the 50 percent cap has “demonstrated that VRS providers can successfully manage at-home [CAs] and that the increased flexibility for [CAs] to operate from their homes offices expands the pool of available [CAs].”⁸

The Commenters appreciate that increasing the limit of minutes relayed through remote workstations to 80 percent likely improves the pool of available CAs, and it is patently apparent that the COVID-19 pandemic has accelerated the longer term trend towards working from home

⁶ *Petition* at 1.

⁷ *Id.* at 9.

⁸ *Id.* at 7.

or other remote locations.⁹ Relaying a VRS call, however, is not akin to a casual Teams or Zoom call. There is a heightened expectation of privacy, and as the Commission has repeatedly clarified, a fundamental element of maintaining privacy is the strict “prohibition against allowing CAs to divulge the content of any relayed conversation.”¹⁰

While privacy can be adequately maintained in the carefully controlled confines of a VRS provider’s call center through the implementation of spatial separation between workstations and other reasonable accommodations, as well as the adoption of rigorous personnel protocols, additional oversight must be exercised to ensure that CAs take appropriate steps to ensure the privacy of calls relayed through their remote workstations. Most critically, the Commenters urge the Commission to require VRS providers to routinely audit their CAs using remote workstations on a full-time or part-time basis. At a minimum, such audits should involve an inspection of the remote workstation to ensure that appropriate privacy protocols have been implemented and maintained, including the ability to isolate and secure the remote workstation behind a locked door, and through the utilization of adequate sound proofing where necessary to prevent the inadvertent interception of communications by third parties in close proximity.¹¹

While privacy is paramount, VRS providers should also take appropriate measures to minimize the impact of disruptions to broadband connectivity to remote workstations. More specifically, the Commenters find it implausible that broadband connections to the individual residences where the vast majority of remote workstations will be co-located will have the same

⁹ See *The Future of Work after COVID-19*, McKinsey Global Institute, February 2021, <https://www.mckinsey.com/featured-insights/future-of-work/the-future-of-work-after-covid-19#> (last visited July 15, 2021).

¹⁰ *Structure and Practices of the Video Relay Service Program*, Memorandum Report & Order, 26 FCC Rcd 5545, ¶ 17 (2011) (“*2011 VRS R&O*”).

¹¹ Ensuring that remote workstations are secured and shielded from ambient noise also helps the VRS provider maintain a consistent call experience regardless of the location of the CA.

reliability and redundancy that dedicated call centers enjoy. Accordingly, it is more likely that VRS calls relayed through remote workstations experience the occasional disruption due to inclement weather or loss of power. Given the greater incidence of disruption, the Commission should require VRS providers to implement appropriate measures to provide a call-back option and connectivity to the next available CA in the event of a problem that disables the CA that initially relayed the call.

II. The Commission Should Not Relax the Current Prohibition on Independent Contractors Relaying VRS Calls

The Commenters oppose any permanent relaxation in the longstanding prohibition on independent contractors – instead of traditional employees – serving in the capacity of a CA for relaying VRS calls. The Commission has previously expressed concerns that independent contractors do not have the same degree of accountability as traditional employees, cannot be effectively certified and managed, and are generally more susceptible to fraud, waste and abuse. The Petition’s failure to address these concerns beyond making broad, unsubstantiated assertions that fraud and waste are somehow less likely to occur in the future obviates the need for further evaluation of independent contractors outside the context of short-term emergency use (permitted pursuant to a waiver) during the COVID-19 pandemic.

The Petition argues that “the Commission should allow VRS providers to utilize independent contractor [CAs] to interpret up to 30 percent of a VRS provider’s total relayed minutes in a month or 30 percent of the provider’s average projected conversation minutes for the calendar year.”¹² The Petition further asserts that the use of independent contractors will help alleviate the shortage of qualified CAs, and help providers respond to short-term fluctuations in

¹² *Petition* at 11.

demand for CAs.¹³ With respect to the FCC’s longstanding concerns about performance problems, fraud and waste that ultimately led to a complete ban on the use of independent contractors as CAs in 2011, the Petition asserts that because problems have not yet occurred while using independent contractors pursuant to the Commission’s waiver during the COVID-19 pandemic, future abuses under normalized permanent rules are unlikely to occur.¹⁴

While the use of independent contractors might make it marginally easier for VRS Providers to address the need for CAs during short-term surges¹⁵ without incurring the costs and administrative burdens associated with hiring a traditional employee, there are no other public interest benefits to relaxing the ban on independent contractor CAs, and certain problems that led to the ban a decade ago could readily reemerge were the Commission to permanently lift the band. The FCC did not treat the implementation of the ban on independent contractors relaying VRS calls lightly. As the Commission explained, the “proliferation of [third parties] providing VRS has had substantial adverse consequences. Most significantly, in addition to effectively rendering our eligibility process meaningless, it has hampered the Commission’s ability to exercise oversight over the provision of VRS and to prevent fraud.”¹⁶ The ban on subcontractors was expressly intended to rectify this problem by bringing all core functions of a VRS provider “under the direct supervision of the Commission.”¹⁷

Allowing VRS providers to offload up to 30 percent of their VRS traffic to subcontractors that the FCC does not directly regulate or oversee strips the protections the FCC adopted in 2011

¹³ *See Id.*

¹⁴ *See Id.* at 12.

¹⁵ For example, VRS call volume increases dramatically prior to and immediately after a natural disaster.

¹⁶ *2011 VRS R&O*, ¶ 55.

¹⁷ *Id.*, ¶ 58.

without proposing any new supplemental safeguards beyond a mere promise that widespread abuse is somewhat less likely to happen. Such an outcome does not advance the discrete interests of the deaf and hard-of-hearing community, and the Commenters do not believe that it serves any other broader public interest. Accordingly, the Commission should not give further consideration to lifting the permanent moratorium on subcontractors providing any core VRS function absent a fulsome proposal that addresses how the Commission will exercise oversight over the performance and billing practices of such third parties.

III. The Commission Should Extend Waivers Regarding Remote Workstations and Subcontractors Expiring in August 2021, but Restore VRS Call Answer Time Obligations Effective Immediately

The Commenters support a reasonable extension of the existing Commission waiver permitting VRS providers to use remote workstations to relay up to 80 percent of monthly VRS minute volume.¹⁸ Similarly, the Commenters support a reasonable extension of the use of subcontractors to handle up to 30 percent of monthly VRS minute volume.¹⁹ The existing waivers permitting these operations expire in August of 2021, and the Commenters appreciate that abruptly denying an extension of either waiver may impose an unnecessary burden on the VRS providers, and may also hinder the accessibility to and performance of VRS services in the near term. The Commenters support a six month or 180-day extension of these waivers, but could support additional extensions if the ongoing COVID-19 pandemic continues to prevent VRS providers from safely staffing their call centers.

¹⁸ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, 36 FCC Rcd 4264 Order, (2021) (“February 2021 COVID Waiver Extension”), extending the waiver allowing up to 80 percent of minute volume to be handled by remote workstations through August 31, 2021.

¹⁹ See *Id.*, which similarly extended the waiver on independent contractor CAs through August 31, 2021.

The Commenters urge the FCC not to extend the waiver for VRS providers to answer at least 80 percent of VRS calls within 120 seconds.²⁰ While this obligation was tolled during the height of the pandemic,²¹ the Petition asserts that the increased use of remote workstations and subcontractors during the COVID-19 pandemic has alleviated any performance concerns that might have existed in the uncertain initial months of the pandemic. The need for such a waiver is thus moot, and the Commission should decline any further extensions.

IV. Conclusion

The Commenters appreciate the opportunity to submit comments in this important proceeding. We look forward to continuing our work with the Commission to improve the integrity and performance of next generation VRS services.

Respectfully submitted,

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²⁰ See 47 CFR § 64.604(b)(2)(iii), which imposes the obligation that “VRS providers must answer 80% of all VRS calls within 120 seconds, measured on a monthly basis.”

²¹ See *March 2020 Emergency Order*, ¶ 6.

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Dated: July 19, 2021